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Attorneys for Defendant and Counterclaim-Plaintiff TiltWare LLC

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1ST TECHNOLOGY LLC, Plaintiff, vs. IQ-LUDORUM PLC, PLAYTECH CYPRUS LTD., TILTWARE LLC, and KOLYMA CORPORATION, A.V.V., Defendants	Case No. 2:06-cv-323-LDG-RJJ **ANSWER AND COUNTERCLAIMS OF DEFENDANT TILTWARE LLC** **JURY DEMANDED**

Defendant TiltWare LLC, by and through its undersigned counsel, hereby responds and alleges as follows in response to Plaintiff 1st Technology LLC's ("Plaintiff") Complaint for Patent Infringement:

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JURISDICTION AND VENUE

1. TiltWare LLC admits that this Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1338 and that Plaintiff alleges a claim for patent infringement under 35 U.S.C. § 271, but denies that Plaintiff's claim is meritorious. TiltWare LLC denies the remaining allegations of paragraph 1.

2. TiltWare LLC denies the allegations of paragraph 2 insofar as they relate to TiltWare LLC. TiltWare LLC lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 2 and consequently denies those allegations.

3. TiltWare LLC admits that venue is proper but otherwise denies the allegations of paragraph 3.

PARTIES

4. TiltWare LLC admits that U.S. Patent No. 5,564,001 ("the 001 Patent") is entitled "Method and System for Interactively Transmitting Multimedia Information Over a Network Which Requires Reduced Bandwidth," but lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 4 and consequently denies those allegations.

5. TiltWare LLC lacks sufficient information to form a belief as to the truth of the allegations of paragraph 5 and consequently denies those allegations.

6. TiltWare LLC lacks sufficient information to form a belief as to the truth of the allegations of paragraph 6 and consequently denies those allegations.

7. TiltWare LLC admits that TiltWare LLC is a California company with offices at 10866 Wilshire Blvd., 4th Floor, Los Angeles, California 900245, but denies the remaining allegations of paragraph 7.

8. TiltWare LLC lacks sufficient information to form a belief as to the truth of the allegations of paragraph 8 and consequently denies those allegations.

BACKGROUND

9. TiltWare LLC admits that a Dr. Scott Lewis is listed as the inventor of the '001 Patent, but otherwise lacks sufficient information to form a belief as to the truth of the allegations of paragraph 9 and consequently denies those allegations.

10. TiltWare LLC lacks sufficient information to form a belief as to the truth of the allegations of paragraph 10 and consequently denies those allegations.

11. TiltWare LLC lacks sufficient information to form a belief as to the truth of the allegations of paragraph 11 and consequently denies those allegations.

PATENT INFRINGEMENT

12. TiltWare LLC denies the allegations of paragraph 12 insofar as they relate to TiltWare LLC. TiltWare LLC lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 12 and consequently denies those allegations.

13. TiltWare LLC lacks sufficient information to form a belief as to the truth of the allegations of paragraph 13 and consequently denies those allegations.

14. TiltWare LLC lacks sufficient information to form a belief as to the truth of the allegations of paragraph 14 and consequently denies those allegations.

15. TiltWare LLC denies the allegations of paragraph 15.

16. TiltWare LLC lacks sufficient information to form a belief as to the truth of the allegations of paragraph 16 and consequently denies those allegations.

17. TiltWare LLC denies the allegations of paragraph 17 insofar as they relate to TiltWare LLC. TiltWare LLC lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 17 and consequently denies those allegations.

18. TiltWare LLC denies the allegations of paragraph 18 insofar as they relate to TiltWare LLC. TiltWare LLC lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 18 and consequently denies those allegations.

19. TiltWare LLC denies all allegations of the Complaint not specifically admitted in this Answer.

AFFIRMATIVE DEFENSES

TiltWare LLC, through its attorneys, alleges as affirmative defenses to the Complaint:

20. The '001 Patent is invalid and unenforceable for failure to satisfy one or more of the conditions of patentability specified in 35 U.S.C. §§ 102, 103 and 112.

21. TiltWare LLC has not either directly or through acts of contributory infringement or inducement, made, sold, offered for sale or used any product within the scope of any claim, or equivalent to any claim, of the '001 Patent.

22. Any and all purported unlawful acts alleged to have been committed by TiltWare LLC, if and to the extent done, were performed with lack of knowledge and lack of willful intent.

23. TiltWare LLC has not yet completed discovery regarding the prosecution history of the '001 Patent and therefore reserves the right to assert, if appropriate, that Plaintiff, through its attorneys, employees, agents or predecessors in interest, made material misrepresentations to

or withheld relevant information from the United States Patent and Trademark Office during the prosecution of the application for the '001 Patent in order to achieve allowance of the claims, with the result that the '001 Patent is unenforceable. Moreover, TiltWare LLC reserves the right to assert that the initial application as filed was fundamentally flawed, fatally defective, and therefore null and void and, alternatively, that Plaintiff is estopped from asserting either or both infringement by TiltWare LLC products, and validity of the '001 Patent.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, TiltWare LLC requests a trial by jury on all issues presented that can properly be tried to a jury.

WHEREFORE, Defendant TiltWare LLC respectfully request that Plaintiffs' Complaint be dismissed and pray for relief as follows:

A. For an Order denying and dismissing Plaintiffs' Complaint with prejudice;

B. If the Court determines this to be an exceptional case, for an Order awarding TiltWare LLC its attorneys' fees and costs under 35 U.S.C. § 285; and

C. For such other and further relief as the Court may deem just and proper under the circumstances.

COUNTERCLAIMS

Counterclaim-Plaintiff TiltWare LLC through its attorneys, for its Counterclaims against Plaintiff 1st Technology LLC, allege as follows:

PARTIES

24. Counterclaim-Plaintiff TiltWare LLC is a corporation organized under the laws of the State of California with its principal place of business in Los Angeles, California. TiltWare LLC has been in the business of developing and licensing software products.

25. On information and belief as alleged in the Complaint and subsequent papers filed in this case, Counterclaim-Defendant 1st Technology LLC is a limited liability corporation organized and existing under the laws of the State of Nevada, with its principal place of business at 654 North Santa Cruz Avenue #C169, Los Gatos, California 95030.

JURISDICTION

26. Subject matter jurisdiction is conferred by 28 U.S.C. §§ 1331 (federal question) and 1338 (patent).

27. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

BACKGROUND

28. U.S. Patent No. 5,564,001 ("the '001 Patent") is entitled "Method and System for Interactively Transmitting Multimedia Information Over a Network Which Requires a Reduced Bandwidth. Upon information and belief as alleged in the Complaint, Counterclaim-Defendant 1st Technology LLC is the assignee of and owns all right, title and interest in, the '001 Patent.

29. The '001 Patent lists several types of multimedia information that can be interactively transmitted under the claimed invention, specifically: interactive video systems used to purchase consumer goods at home, *i.e.,* QVC or Home Shopping Network; audio information in which news, weather, music and the like can be transmitted; and combinations of graphics, video and music in an entertainment form such as Karaoke.

FIRST CLAIM FOR RELIEF
Declaratory Judgment of Noninfringement

30. Counterclaim-Plaintiff TiltWare LLC incorporates by reference Paragraphs 24-29 of its Counterclaims as though fully set forth herein.

31. This First Claim is a declaratory judgment claim.

32. This claim arises under the provisions of the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the patent laws of the United States, 35 U.S.C. §§ 1, et seq.

33. Counterclaim-Defendant 1st Technology LLC claims to own valid and enforceable rights in and to the '001 Patent and has filed an action against Counterclaim-Plaintiff TiltWare LLC and others seeking monetary relief and various enhanced damages, such as attorney's fees, for alleged infringement of the '001 Patent.

34. Counterclaim-Plaintiff TiltWare LLC denies the allegations of infringement and Counterclaim-Defendant 1st Technology LLC's entitlement to any relief, damages or enhanced damage on these grounds.

35. There exists an actual and justifiable controversy between Counterclaim-Plaintiff TiltWare LLC and Counterclaim-Defendant 1st Technology LLC with respect to the '001 Patent, including without limitation, the alleged infringement by Counterclaim-Plaintiff, and Counterclaim-Defendant's entitlement to relief whether monetary or injunctive, compensatory or enhanced.

36. A judicial declaration pursuant to 28 U.S.C. §§ 2201 and 2202 is necessary to ascertain the parties' rights and duties with respect to the '001 Patent.

SECOND CLAIM FOR RELIEF
Declaratory Judgment of Invalidity

37. Counterclaim-Plaintiff TiltWare LLC incorporates by reference Paragraphs 24-38 of its Counterclaims as though fully set forth herein.

38. This Second Claim is a declaratory judgment claim.

39. This claim arises under the provisions of the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the patent laws of the United States 35 U.S.C. §§ 1, et seq.

40. Counterclaim-Defendant 1st Technology LLC claims to own valid and enforceable rights in and to the '001 Patent, and has filed an action against Counterclaim-Plaintiff TiltWare LLC and others seeking monetary relief and various enhanced damages, such as attorney's fees, for alleged infringement of the '001 Patent.

41. Counterclaim-Plaintiff TiltWare LLC denies all allegations of infringement, validity and enforceability, and Counterclaim-Defendant 1st Technology LLC's entitlement to any relief, damages or enhanced damage on these grounds.

42. There exists an actual and justifiable controversy between Counterclaim-Plaintiff TiltWare LLC and Counterclaim-Defendant 1st Technology LLC with respect to the '001 Patent, including without limitation, the infringement, validity and enforceability of its claims and Counterclaim-Defendant's entitlement to relief whether monetary or injunctive, compensatory or enhanced.

43. A judicial declaration pursuant to 28 U.S.C. §§ 2201 and 2202 is necessary to ascertain the parties' rights and duties with respect to the '001 Patent.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, TiltWare LLC requests a trial by jury on all issues presented that can properly be tried to a jury.

WHEREFORE, Defendant and Counterclaim-Plaintiff TiltWare LLC, prays for relief as follows:

A. For dismissal of the underlying action and for entry of judgment, with prejudice, for Defendant and Counterclaim-Plaintiff TiltWare LLC and against Plaintiff and Counterclaim-Defendant 1st Technology LLC;

B. That Plaintiff takes nothing by way of its Complaint;

C. That the '001 Patent be declared not infringed by Defendant and Counterclaim-Plaintiff TiltWare LLC, whether directly, contributorily, or by inducement.

D. That the '001 Patent be declared invalid;

E. That the '001 Patent be declared unenforceable;

F. That this Court determine this an exceptional case and issue an Order awarding Defendant and Counterclaim-Plaintiff TiltWare LLC its attorneys' fees and costs under 35 U.S.C. § 285, with such damages being assessed as the Court determines to be just and proper;

G. That the Court impose against Plaintiff and Counterclaim-Defendant 1st Technology LLC injunctive, compensatory, punitive, exemplary and other sanctions to the extent the Court may deem just and proper; and

H. For such other and further relief as the Court may deem just and proper.

DATED this 31st day of August, 2007.

Respectfully submitted,

/s/______________________

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2007, I electronically transmitted the attached **ANSWER AND COUNTERCLAIMS OF DEFENDANT TILTWARE LLC** to the Clerk's Office using the CM/ECF System for filing and distribution to the following parties:

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Dated this 31st day of August, 2007.

/s/________________________________
Cynthia R. Ervin, an Employee of
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